

Navigating the World of Criminal Justice

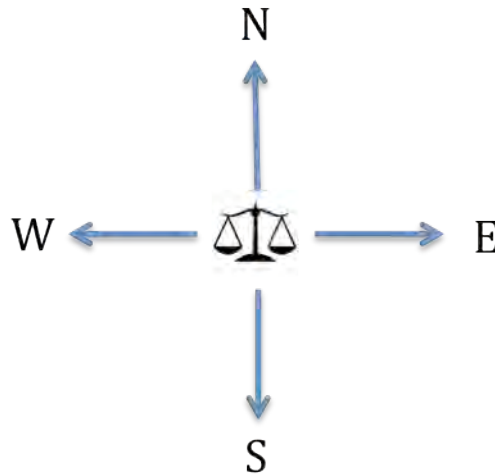


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Definitions

- **Binding Over:** When a judge has issued a finding of probable cause to proceed in a criminal case, it may be “bound over”. A person can be required to refrain from certain activities for a stipulated period, to be of good behavior or to comply with other conditions
- **Charge:** An accusation, typically one formally made against a prisoner brought to trial
- **Drug Court:** A specially designed court calendar or docket, the purposes of which are to achieve a reduction in recidivism and substance abuse among nonviolent substance abusing offenders and to increase the offender’s likelihood of successful habilitation through early, continuous, and intense judicially supervised treatment, mandatory periodic drug testing, community supervision, and use of appropriate sanctions and other rehabilitation services
- **Felony:** A crime regarded as more serious than a misdemeanor, and usually punishable by imprisonment for more than one year
- **Jail:** A jail is a secure facility operated by a county or a city government that houses three main types of inmates:
 - a) People who have been arrested and are being held pending a plea agreement, trial, or sentencing;
 - b) People who have been convicted of a misdemeanor criminal offense and are serving a sentence of (typically) less than 1 year; and
 - c) People who have been sentenced to prison and are about to be transferred to another facility
- **Misdemeanor:** a non-indictable offense, regarded in the US as less serious than a felony
- **Outstanding Warrant:** An order that has not yet been carried out; an order for which the action commanded has not been taken
- **Parole:** the release of a prisoner temporarily (for a special purpose) or permanently before the completion of a sentence, on the promise of good behavior and is administered by the Department of Correctional Services
- **Parole Hearing:** a hearing to determine whether an inmate should be released from prison to parole supervision in the community for the remainder of the sentence. The hearing is conducted by a Hearing

Examiner of the United States Parole Commission. The decision on whether the inmate should be granted parole is made by a Commissioner of the United States Parole Commission after reviewing the hearing record created by the Hearing Examiner

- **Pre-Sentence Investigation:** is a legal term referring to the **investigation** into the history of person convicted of a crime before sentencing to determine if there are extenuating circumstances which should ameliorate the sentence or a history of criminal behavior to increase the harshness of the sentence
- **Prison:** a secure facility operated by a state government or the federal government that houses people who have been convicted of a felony criminal offense and are serving a sentence of (typically) 1 year or more
- **Probation:** a situation or period of time in which a person who has committed a crime is allowed to stay out of prison if that person behaves well, does not commit another crime, etc. and is administered by the judicial branch
- **Warrant:** a document issued by a legal or government official authorizing the police or some other body to make an arrest, search premises, or carry out some other action relating to the administration of justice
- **Work Detail:** Inmates assigned to a detail within the facility or on a park or roads crew or other work assignment in the community. Work detail inmates are furnished work clothes, a daily wage, and are not required to pay towards their room and board.
- **Work Release:** residential program designed to integrate selected inmates back into the community through resources and partnerships of which participants' are accountable for their actions.

The work release program provides inmates an opportunity to be employed in the community and receive competitive wages. All applicable taxes on wages earned, Medicare and social security payments are paid or withheld by the employer. Work release inmates are required to pay \$12 per day for room and board and 5% of their net earnings are placed in a savings account for their eventual release.

Felony Classifications

Class I felony	Death
Class IA felony	Life imprisonment
Class IB felony	Maximum - life imprisonment Minimum - twenty years imprisonment
Class IC felony	Maximum - fifty years imprisonment Mandatory minimum - five years imprisonment
Class ID felony	Maximum - fifty years imprisonment Mandatory minimum - three years imprisonment
Class II felony	Maximum -fifty years imprisonment Minimum - one year imprisonment
Class III felony	Maximum -twenty years imprisonment, or twenty-five thousand dollars fine, or both Minimum - one year imprisonment
Class IIIA felony	Maximum -five years imprisonment, or ten thousand dollars fine, or both Minimum - none
Class IV felony	Maximum -five years imprisonment, or ten thousand dollars fine, or both Minimum - none

Examples of Classes of Felonies and Related Crimes

- **Class I felony** is first degree murder in some cases.
- **Class IA felonies** are murder, arson, and kidnapping.
- **Class IB felonies** can include manslaughter, [aggravated assault](#), [burglary](#), and sexual assault of a child in the first degree.
- **Class IC felonies** are robbery, use of a deadly weapon to commit a felony, and possession of certain amounts of [illegal substances](#).
- **Class ID felonies** include possession of certain illegal substances (10 - 28 grams), assault on a police officer or health care professional, and manufacture or distribution of child pornography.
- **Class II felonies** are robbery, human trafficking, assault in the first degree, and sexual assault in the first degree.
- **Class III felonies** can include [forgery](#) in the first degree, assault in the second degree, strangulation with a dangerous instrument, [sexual assault](#) in the second degree, and manufacture or distribution of certain drugs.
- **Class IIIA felonies** are manufacture or distribution of certain drugs and criminal [enticement of a child](#).
- **Class IV felonies** include assisted suicide and forgery in the second degree.

Misdemeanor Classifications

Class I misdemeanor	Maximum - not more than one year imprisonment, or one thousand dollars fine, or both Minimum - none
Class II misdemeanor	Maximum - six months imprisonment, or one thousand dollars fine, or both Minimum - none
Class III misdemeanor	Maximum -three months imprisonment, or five hundred dollars fine, or both Minimum - none
Class IIIA misdemeanor	Maximum - seven days imprisonment, five hundred dollars fine, or both Minimum - none
Class IV misdemeanor	Maximum - no imprisonment, five hundred dollars fine Minimum - one hundred dollars fine
Class V misdemeanor	Maximum - no imprisonment, one hundred dollars fine Minimum – none
Class W misdemeanor	Driving under the influence or implied consent

First conviction

Maximum - sixty days imprisonment and five hundred dollars fine

Mandatory minimum - seven days imprisonment and five hundred dollars fine

Second conviction

Maximum - six months imprisonment and five hundred dollars fine
Mandatory minimum - thirty days imprisonment and five hundred dollars fine

Third conviction

Maximum - one year imprisonment and one thousand dollars fine

Mandatory minimum - ninety days imprisonment and one thousand dollars fine

Examples of Classes of Misdemeanors and Related Crimes

- **Class I Misdemeanors**

Some examples of Class I misdemeanors in Nebraska are identity theft (if the value gained is less than \$200), impersonating a peace officer, and assault in the third degree.

- **Class II Misdemeanors**

Hazing, second degree criminal trespass, and passing a bad check in an amount less than \$200 are Class II misdemeanors in Nebraska.

- **Class III Misdemeanors**

Class III misdemeanors include theft of property valued at \$200 or less, littering, and possession of marijuana (more than one ounce but less than one pound).

- **Class IIIA Misdemeanors**

A repeat offense of owning a dangerous dog and a third offense of possession of one ounce or less of marijuana are Class IIIA misdemeanors.

- **Class IV Misdemeanors**

Class IV misdemeanors are not jailable offenses and include some agricultural crimes, some gambling offenses, harassment of a police animal, and purchase of a lottery ticket by a person under the age of 19.

- **Class V Misdemeanors**

Class V misdemeanors also are not jailable offenses. The sale of a puppy or kitten under 8 weeks old without the animal's mother by an individual (not a shelter), smoking or using tobacco products under the age of eighteen, and obstructing entrance or exit from a polling place are Class V misdemeanors.

- **Class W Misdemeanor**

Driving under the influence (first, second or third offense) is a Class W misdemeanor.

Pardon

What does a pardon do?

A pardon restores civil rights lost due to a felony conviction. These rights include, but are not limited to:

1. The right to vote
2. The right to be a juror
3. The right to hold public office
4. The right to bear arms
5. The right of admission to professional schools
6. The right to take Civil Service Examination
7. The right to serve in the military
8. The right to be issued a passport
9. The right to hold certain licenses (Liquor and Public Health and Welfare Licenses)
10. The right to hold certain licenses (Liquor, Public Health, and Welfare Licenses)
i.e. teacher, attorney, doctor/nurse, beautician/barber, private investigator, law enforcement, etc.
11. The right to government grants, loans, contracts, public housing, and educational funding

How much time needs to pass before applying for a pardon?

At least 5 years for a misdemeanor conviction or 10 years for a felony conviction.

Useful Links:

<http://www.pardons.nebraska.gov/faq.html>

<http://www.pardons.nebraska.gov/pardons.html>

Pardon Versus Set Aside (cont.)

What is a Set Aside?

A set aside is an order by the judge who sentenced you in a criminal case that voids the conviction. As part of the decision to set-aside a criminal conviction, a judge must believe that it is in your best interest to do so and that setting aside the conviction is “consistent with the public welfare.” The decision is “discretionary,” which means it is totally up to the judge. While the set-aside **does not erase** a criminal record, the order setting aside the conviction is added to the criminal record. Since a criminal conviction affects your ability to get a job, a potential employer doing a criminal background check will see both the conviction and the order that “sets aside” that conviction.

Facts About Filing for a Motion to Set Aside in Nebraska

Both felony and misdemeanor criminal convictions can be set aside. You are eligible to have your conviction set aside if you were placed on probation **OR** your sentence was a fine only, **AND** you successfully completed the terms of your probation or paid the fine.

Before setting aside a criminal conviction a judge will consider these factors:

- Whether you had any criminal convictions since the conviction you want the judge to set aside and the types of convictions.
- Whether it appears likely you will remain law-abiding in the future.
- The length of time between your last criminal offense and your request for a set-aside.

Useful Links:

<https://supremecourt.nebraska.gov/self-help/7254/petition-set-aside-criminal-conviction>

http://www.papillonfoundation.org/images/Nebraska_Set_Aside_Instructions.pdf

Juvenile Records

What does it mean to have a record sealed?

If your juvenile record is sealed, information about your juvenile record is not available to the public.

Who can have their Juvenile Record Sealed?

In order to be eligible to have your juvenile record sealed, you must be under the age of eighteen when the offense took place and you must satisfactorily complete the diversion, mediation, probation, supervision, treatment or rehabilitation program or sentence ordered by the Juvenile or County Court. Furthermore, you are only eligible to have your juvenile record sealed if:

- ☒ You were offered juvenile pretrial diversion or mediation;
- ☒ Charges were filed against you in Juvenile Court for a misdemeanor, felony, traffic, or status offense; or
- ☒ You were charged with a misdemeanor or infraction in County Court (except for waivable traffic offenses—offenses for which you can waive your court appearance by paying a fine).

You are not eligible to have your juvenile record sealed if you were charged with a felony in District Court.

Once your record has been sealed, who can access it?

A sealed record is still accessible to law enforcement officers, county attorneys, city attorneys, and a sentencing judge in a separate case you may be involved with. Sealed records can also be inspected under certain circumstances by:

- ☒ The person whose record has been sealed, upon appropriate application to the court;
- ☒ By a court or by a person allowed by a court order to inspect the record for “good cause shown”;
- ☒ By request of a person in a civil law suit that is based on the circumstances contained in the sealed record;
- ☒ Persons engaged in bona fide research, but only if the research protects the confidentiality of the sealed record;
- ☒ The Nebraska Probation System; and
- ☒ The Department of Health and Human Services

Juvenile Records (cont.)

What is the Process of Sealing a Juvenile Record?

If you are eligible to have your juvenile record sealed, the process **will begin automatically when you are seventeen years of age**. The county or city attorney will be notified by the court that the process to seal your record has been initiated. This is meant to give the county or city attorney the opportunity to object to the sealing of your court record. The court may set the matter for hearing, or, if no objection is filed to the sealing of your juvenile record, the court may order the record **sealed** without a hearing and you will be notified by mail that your record has been sealed. If the county or city **attorney objects to the sealing of your record**, there will be a hearing in front of a judge to decide whether your juvenile record should be sealed. If there will be a hearing, **you will be notified by mail of the hearing date, location and time**. After conducting a hearing, the court may order your record to be sealed if it finds that you have been satisfactorily rehabilitated based on the factors listed below.

If you would like to ask the court to begin the process to seal your juvenile record before you reach the age of seventeen; or if you are older than the age of seventeen and would like to ask the court to seal your past juvenile record, you may do so as long as you have satisfactorily completed the diversion, mediation, probation, supervision, treatment or rehabilitation program or sentence ordered by the Juvenile or County Court.

How will the Judge Decide?

- ☒ The court can consider a number of factors to determine whether or not to seal a juvenile record, including:
 - ☒ The age of the juvenile;
 - ☒ The nature of the offense and the role of the juvenile in the offense;
 - ☒ The behavior of the juvenile after the adjudication and the juvenile's response to treatment and rehabilitation programs;
 - ☒ The education and employment history of the juvenile;
- and
- ☒ Any other circumstances that may relate to the rehabilitation of the juvenile who is the subject of the record under consideration.

Juvenile Records (cont.)

What Happens if the Juvenile Record is NOT Ordered to be Sealed?

If the juvenile record is not ordered to be sealed, it will remain open to the public. After one year, you can reapply to have your record sealed.

What happens if the Juvenile Record is sealed?

Once a judge orders your juvenile record to be sealed, every public office or agency must keep any facts related to the sealed record confidential. The court will give notice of the record being sealed to every agency or office it knows may be affected by the order. However, if you know of any public office or agency that may have information relating to the sealed record that may not have received notice from the court of the order to seal the record, you may make a written request to that agency, along with a copy of the court order to seal the record, that the office or agency act in accordance with the court order.

How Should You Answer Questions about Your Sealed Juvenile Record?

If your juvenile record has been sealed, you are not obligated to disclose any facts about the record, or that you have a sealed record at all. In fact, employers are not allowed to ask if you have had a juvenile record sealed. When applying for jobs, licenses, scholarships or other rights or privileges, you may respond to questions as if no record exists.

If problems regarding your sealed record arise, you or your potential employer may contact the Nebraska Administrative Office of the Courts at 402-471-3730.

County, State, and Federal What's the difference??



Jails are run by the **county** and are locally operated holding places. **County** time is usually for a brief periods of incarceration (misdemeanors) or as a detention place before and during trial and other legal matters.

Prisons are **federally** or **state**-run, are generally much larger and much more high-security. Inmates convicted of federal felonies go to federal prison, and those convicted of state felonies go to state prison.

Some examples of **federal** crimes include the use of biological weapons, acts of civil disorder, kidnapping, and racketeering.

Criminal Justice Process

A Crime is Reported - most criminal cases begin with a law enforcement agency. Cases are investigated by a city police agency, the county sheriff or the Nebraska State Police. When a police officer or agency has probable cause to believe that a misdemeanor or felony has been committed, the case is referred to the Prosecuting Attorney's office.

Suspect Charged - a person suspected of a crime may be charged in one of two ways. First is through an official Complaint from the Prosecutor's Office filed with the court. The second is by convening a Grand Jury that makes a charging decision based upon the available evidence.

Arrest Made or Warrant Issued - once it has been determined that there is probable cause to show that a crime was committed, the investigating agency makes an arrest of the suspect, or the courts will publish a warrant asking for the suspect's arrest.

Arraignment - a suspect's first court appearance is called an arraignment and at this hearing the suspect is allowed an opportunity to plead guilty or not guilty. Also during the arraignment the suspect is notified of the charges they face, what the penalty is for a conviction on those charges and is imposed conditions of release by the arraigning judge. The suspect may post bail themselves at this time, allowing his or her release, or the judge may opt to submit the suspect to the pre-trial release program.

Court Hearings - after the arraignment, but before trial, there are several court hearings that may or may not occur, depending on the type and severity of the case. These hearings include Preliminary Hearings, Pre Trial Conferences, Motions Hearings, and other hearings as deemed

necessary by the circumstances of the case. It is often during these hearings that plea agreements are negotiated and resolved.

Preliminary Hearing – a hearing to determine if a person charged with a felony (a serious crime punishable by a term in the state prison) should be tried for the crime charged, based on whether there is some substantial evidence that he/she committed the crime. A preliminary hearing is held in the lowest local court (magistrate), but only if the prosecutor has filed the charge without asking the Grand Jury for an indictment for the alleged crime. Such a hearing must be held within a few days after arraignment (presentation in court of the charges and the defendant's right to plead guilty or not guilty). If the judge finds sufficient evidence to try the defendant, the case is sent to the district court for trial. If there is no such convincing evidence, the judge will dismiss the charges.

Pre-Trial - A meeting of the prosecutor and the defense attorney held before the court prior to the commencement of actual courtroom proceedings. Generally, the term pretrial conference is used interchangeably with the term pretrial hearing. A pretrial conference may be conducted for several reasons: (1) expedite disposition of the case, (2) help the court establish managerial control over the case, (3) discourage wasteful pretrial activities, (4) improve the quality of the trial with thorough preparation, and (5) facilitate a settlement of the case.

Public Defender - once arraigned, the defendant may be appointed a Public Defender if they cannot afford an attorney of their own.

Plea Bargain - often, the Deputy Prosecuting Attorney assigned to the case will offer a plea bargain. A plea bargain requires the defendant to plead guilty in exchange for considerations from the Prosecutor's Office. Plea bargains are generally offered to the defense attorney or Public Defender assigned to the case, then communicated to the defendant.

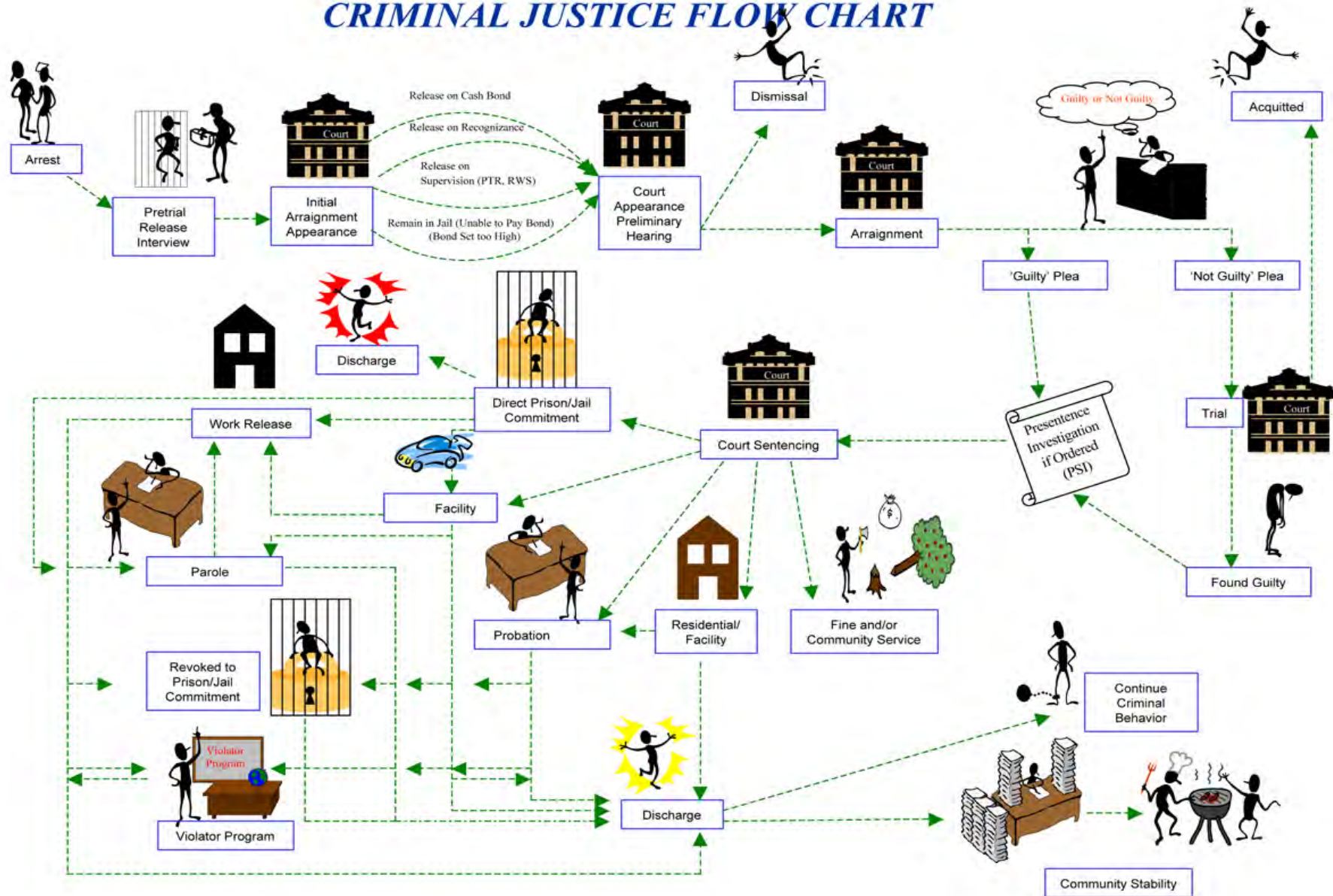
Trial - a defendant is afforded a chance to defend him or herself against the charges laid by the State at a jury trial or court trial. Court trials are for minor infractions and are overseen by a judge. Jury trials include a jury made up of Canyon County residents. For misdemeanor crimes a unanimous jury of six (6) individuals must make a decision. For felony crimes a unanimous jury of twelve (12) individuals must make a decision. The jury makes the final decision on guilt or innocence based upon the evidence presented to them.

Acquittal - if a defendant goes to trial and is found not guilty, they are considered to be acquitted and may not be charged again for the crimes that they were accused.

Conviction - when a defendant is found guilty of their crime by a jury or judge, they are considered to be convicted. Convictions may be appealed to a higher court for relief.

Sentencing - once a defendant has plead guilty or been convicted of the charges against them, sentencing is imposed by a judge. The terms of the sentence will vary based upon the crime type and severity and the defendant's previous convictions, if any.

CRIMINAL JUSTICE FLOW CHART



Employment and Legal Convictions

Effective Search Strategies:

- Limiting employers can limit wage and job prospects--keep skills, experience, and career goals in mind
From a recent survey cited in a Bureau of Prisons report of more than 1,200 employers, only 8% reported that they would not hire an ex-offender. (www.jailstojobs.org)
- 80/20 rule: if 80% will not hire, 20% still will, 20 out of 100 is worth pursuing...
- Invisible Jobs: cold calling/hidden job search market
- Use more than two job search strategies (networking, internet, yellow pages, VR). Lowers competition!!

Employment and Legal Convictions

Explaining job gaps/legal history: Gaps in work history due to periods of incarceration, and legal history in general, is best explained in an honest manner.

Using a letter of explanation to help prepare a response to an employer is a helpful tip.

Why use a letter of explanation?

Using a letter of explanation helps the client prepare for the interview, feel more comfortable, and decide when it is the best time to bring up legal issues during the interview process.

Recommend the following tips to follow in an interview:

- Open and honest communication is best.
- Explain he/she made a mistake. Avoid words like convicted, charged, incarcerated, etc.
- Explain that he/she cannot do anything about what is already done however; he/she can do everything with what is left.
- It is extremely important to stay positive and turn his/her experience into an opportunity to discuss what's different now.
- Don't dwell on the past!